

REFERENCE TITLE: **CORP; membership; ordinary disability**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2142

Introduced by
Representatives McClure: Alvarez

AN ACT

AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 264, SECTION 13 AND CHAPTER 308, SECTION 1; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 264, SECTION 14 AND CHAPTER 308, SECTION 2; AMENDING SECTIONS 38-886.01 AND 38-893, ARIZONA REVISED STATUTES; RELATING TO THE CORRECTIONS OFFICER RETIREMENT PLAN; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-881, Arizona Revised Statutes, as amended by
3 Laws 2006, chapter 264, section 13 and chapter 308, section 1, is amended to
4 read:

5 38-881. Definitions

6 In this article, unless the context otherwise requires:

7 1. "Accidental disability" means a physical or mental condition that
8 the local board finds totally and permanently prevents an employee from
9 performing a reasonable range of duties within the employee's department, was
10 incurred in the performance of the employee's duties and was the result of
11 any of the following:

12 (a) Physical contact with inmates, prisoners, parolees or persons on
13 probation.

14 (b) Responding to a confrontational situation with inmates, prisoners,
15 parolees or persons on probation.

16 (c) A job related motor vehicle accident while on official business
17 for the employee's employer. A job related motor vehicle accident does not
18 include an accident that occurs on the way to or from work. Persons found
19 guilty of violating a personnel rule, a rule established by the employee's
20 employer or a state or federal law in connection with a job related motor
21 vehicle accident do not meet the conditions for accidental disability.

22 2. "Accumulated member contributions" means the sum of all member
23 contributions deducted from a member's salary and paid to the fund, plus
24 member contributions transferred to the fund by another retirement plan
25 covering public employees of this state, plus previously withdrawn
26 accumulated member contributions which are repaid to the fund in accordance
27 with this article, minus any benefits paid to or on behalf of a member.

28 3. "Average monthly salary" means one-thirty-sixth of the aggregate
29 amount of salary that is paid a member by a participating employer during a
30 period of thirty-six consecutive months of service in which the member
31 received the highest salary within the last one hundred twenty months of
32 service. Average monthly salary means the aggregate amount of salary that is
33 paid a member divided by the member's months of service if the member has
34 less than thirty-six months of service. In the computation under this
35 paragraph, a period of nonpaid or partially paid industrial leave shall be
36 considered based on the salary the employee would have received in the
37 employee's job classification if the employee was not on industrial leave.

38 4. "Beneficiary" means an individual who is being paid or who has
39 entitlement to the future payment of a pension on account of a reason other
40 than the individual's membership in the retirement plan.

41 5. "Claimant" means a member, beneficiary or estate that files an
42 application for benefits with the retirement plan.

43 6. "Credited service" means credited service transferred to the
44 retirement plan from another retirement system or plan for public employees

1 of this state, plus those compensated periods of service as a member of the
2 retirement plan for which member contributions are on deposit in the fund.

3 7. "Designated position" means:

4 (a) For a county:

5 (i) A county detention officer.

6 (ii) A nonuniformed employee of a sheriff's department whose primary
7 duties require direct contact with inmates.

8 (b) For the state department of corrections and the department of
9 juvenile corrections, only the following specifically designated positions:

10 (i) Food service.

11 (ii) Nursing personnel.

12 (iii) Corrections physician assistant.

13 (iv) Therapist.

14 (v) Corrections dental assistant.

15 (vi) Hygienist.

16 (vii) Corrections medical assistant.

17 (viii) Correctional service officer, including assistant deputy
18 warden, deputy warden, warden and superintendent.

19 (ix) State correctional program officer.

20 (x) Parole or community supervision officers.

21 (xi) Investigators.

22 (xii) Teachers.

23 (xiii) Institutional maintenance workers.

24 (xiv) Youth corrections officer.

25 (xv) Youth program officer.

26 (xvi) Behavioral health treatment unit managers.

27 (xvii) The director and assistant directors of the department of
28 juvenile corrections and the superintendent of the state educational system
29 for committed youth.

30 (xviii) The director, deputy directors and assistant directors of the
31 state department of corrections.

32 (xix) Other positions designated by the local board of the state
33 department of corrections or the local board of the department of juvenile
34 corrections pursuant to section 38-891, subsection E.

35 (c) For a city or town, a city or town detention officer.

36 (d) For an employer of an eligible group as defined in section 38-842,
37 full-time dispatchers.

38 (e) For the judiciary, probation, surveillance and juvenile detention
39 officers.

40 (f) FOR THE FUND MANAGER OF THE PUBLIC SAFETY PERSONNEL RETIREMENT
41 SYSTEM, ALL FULL-TIME EMPLOYEES, EXCEPT THE ADMINISTRATOR, OF THE FUND
42 MANAGER.

43 8. "Employee" means a person determined by the local board to be
44 employed by a participating employer in a designated position.

1 9. "Employer" means an agency or department of this state or a
2 political subdivision of this state ~~which~~, INCLUDING THE FUND MANAGER, THAT
3 has one or more employees in a designated position.

4 10. "Fund" means the corrections officer retirement plan fund.

5 11. "Fund manager" means the fund manager of the public safety
6 personnel retirement system.

7 12. "Juvenile detention officer" means a juvenile detention officer
8 responsible for the direct custodial supervision of juveniles who are
9 detained in a county juvenile detention center.

10 13. "Local board" means the retirement board of the employer that
11 consists of persons appointed or elected to administer the plan as it applies
12 to the employer's members in the plan.

13 14. "Member" means any employee who meets all of the following
14 qualifications:

15 (a) Who is a full-time paid person employed by a participating
16 employer in a designated position.

17 (b) Who is receiving salary for personal services rendered to a
18 participating employer or would be receiving salary except for an authorized
19 leave of absence.

20 (c) Whose customary employment is at least forty hours each week and
21 for more than six months in a calendar year.

22 15. "Normal retirement date" means the first day of the calendar month
23 immediately following an employee's completion of twenty years of service or,
24 in the case of a dispatcher, twenty-five years of service, the employee's
25 sixty-second birthday and completion of ten years of service or the month in
26 which the sum of the employee's age and years of credited service equals
27 eighty.

28 16. "ORDINARY DISABILITY" MEANS A PHYSICAL CONDITION THAT THE LOCAL
29 BOARD DETERMINES WILL PREVENT AN EMPLOYEE FROM TOTALLY AND PERMANENTLY
30 PERFORMING A REASONABLE RANGE OF DUTIES WITHIN THE EMPLOYEE'S DEPARTMENT OR A
31 MENTAL CONDITION THAT THE LOCAL BOARD DETERMINES WILL PREVENT AN EMPLOYEE
32 FROM TOTALLY AND PERMANENTLY ENGAGING IN ANY SUBSTANTIAL GAINFUL ACTIVITY.

33 ~~16.~~ 17. "Participating employer" means:

34 (a) An employer which the fund manager has determined to have one or
35 more employees in a designated position. ~~or~~

36 (b) A county, city or town which has entered into a joinder agreement
37 pursuant to section 38-902.

38 (c) BEGINNING JULY 1, 2007, THE FUND MANAGER.

39 ~~17.~~ 18. "Pension" means a series of monthly payments by the retirement
40 plan.

41 ~~18.~~ 19. "Probation or surveillance officer" means an officer appointed
42 pursuant to section 8-203, 12-251 or 12-259 but does not include other
43 personnel, office assistants or support staff.

44 ~~19.~~ 20. "Retired member" means an individual who is being paid a
45 pension on account of the individual's membership in the retirement plan.

~~20.~~ 21. "Retirement" means termination of employment after a member has fulfilled all requirements for a pension.

~~21.~~ 22. "Retirement plan" or "plan" means the corrections officer retirement plan established by this article.

~~22.~~ 23. "Salary" means the base salary, shift differential pay and holiday pay paid a member in a designated position for personal services rendered to a participating employer on a regular monthly, semimonthly or biweekly payroll basis. Salary includes amounts that are subject to deferred compensation or tax shelter agreements. Salary does not include payment for any remuneration or reimbursement other than as prescribed by this paragraph. For the purposes of this paragraph, "base salary" means the amount of compensation each member is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, fringe benefit pay and similar extra payments.

~~23.~~ 24. "Service" means employment rendered to a participating employer as an employee in a designated position. Any absence that is authorized by an employer, including any periods during which the employee is on an employer sponsored long-term disability program, is considered as service if the employee returns or is deemed by the employer to have returned to a designated position within the period of the authorized absence.

~~24.~~ 25. "Total and permanent disability" means a physical or mental condition that is not an accidental disability, that the local board finds totally and permanently prevents a member from engaging in any gainful employment and that is the direct and proximate result of the member's performance of the member's duty as an employee of a participating employer.

Sec. 2. Section 38-881, Arizona Revised Statutes, as amended by Laws 2006, chapter 264, section 14 and chapter 308, section 2, is amended to read:

38-881. Definitions

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department, was incurred in the performance of the employee's duties and was the result of any of the following:

(a) Physical contact with inmates, prisoners, parolees or persons on probation.

(b) Responding to a confrontational situation with inmates, prisoners, parolees or persons on probation.

(c) A job related motor vehicle accident while on official business for the employee's employer. A job related motor vehicle accident does not include an accident that occurs on the way to or from work. Persons found guilty of violating a personnel rule, a rule established by the employee's employer or a state or federal law in connection with a job related motor vehicle accident do not meet the conditions for accidental disability.

1 2. "Accumulated member contributions" means the sum of all member
2 contributions deducted from a member's salary and paid to the fund, plus
3 member contributions transferred to the fund by another retirement plan
4 covering public employees of this state, plus previously withdrawn
5 accumulated member contributions which are repaid to the fund in accordance
6 with this article, minus any benefits paid to or on behalf of a member.

7 3. "Average monthly salary" means one-thirty-sixth of the aggregate
8 amount of salary that is paid a member by a participating employer during a
9 period of thirty-six consecutive months of service in which the member
10 received the highest salary within the last one hundred twenty months of
11 service. Average monthly salary means the aggregate amount of salary that is
12 paid a member divided by the member's months of service if the member has
13 less than thirty-six months of service. In the computation under this
14 paragraph, a period of nonpaid or partially paid industrial leave shall be
15 considered based on the salary the employee would have received in the
16 employee's job classification if the employee was not on industrial leave.

17 4. "Beneficiary" means an individual who is being paid or who has
18 entitlement to the future payment of a pension on account of a reason other
19 than the individual's membership in the retirement plan.

20 5. "Claimant" means a member, beneficiary or estate that files an
21 application for benefits with the retirement plan.

22 6. "Credited service" means credited service transferred to the
23 retirement plan from another retirement system or plan for public employees
24 of this state, plus those compensated periods of service as a member of the
25 retirement plan for which member contributions are on deposit in the fund.

26 7. "Designated position" means:

27 (a) For a county:

28 (i) A county detention officer.

29 (ii) A nonuniformed employee of a sheriff's department whose primary
30 duties require direct contact with inmates.

31 (b) For the state department of corrections and the department of
32 juvenile corrections, only the following specifically designated positions:

33 (i) Food service.

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40 (viii) Correctional service officer, including assistant deputy
41 warden, deputy warden, warden and superintendent.

42 (ix) State correctional program officer.

43 (x) Parole or community supervision officers.

44 (xi) Investigators.

45 (xii) Teachers.

- 1 (xiii) Institutional maintenance workers.
2 (xiv) Youth corrections officer.
3 (xv) Youth program officer.
4 (xvi) Behavioral health treatment unit managers.
5 (xvii) The director and assistant directors of the department of
6 juvenile corrections and the superintendent of the state educational system
7 for committed youth.
8 (xviii) The director, deputy directors and assistant directors of the
9 state department of corrections.
10 (xix) Other positions designated by the local board of the state
11 department of corrections or the local board of the department of juvenile
12 corrections pursuant to section 38-891, subsection E.
13 (c) For a city or town, a city or town detention officer.
14 (d) For an employer of an eligible group as defined in section 38-842,
15 full-time dispatchers.
16 (e) For the judiciary, probation, surveillance and juvenile detention
17 officers.
18 (f) FOR THE FUND MANAGER OF THE PUBLIC SAFETY PERSONNEL RETIREMENT
19 SYSTEM, ALL FULL-TIME EMPLOYEES, EXCEPT THE ADMINISTRATOR, OF THE FUND
20 MANAGER.
21 8. "Employee" means a person determined by the local board to be
22 employed by a participating employer in a designated position.
23 9. "Employer" means an agency or department of this state or a
24 political subdivision of this state ~~which~~, INCLUDING THE FUND MANAGER, THAT
25 has one or more employees in a designated position.
26 10. "Fund" means the corrections officer retirement plan fund.
27 11. "Fund manager" means the fund manager of the public safety
28 personnel retirement system.
29 12. "Juvenile detention officer" means a detention officer responsible
30 for the direct custodial supervision of juveniles who are detained in a
31 county juvenile detention center.
32 13. "Local board" means the retirement board of the employer that
33 consists of persons appointed or elected to administer the plan as it applies
34 to the employer's members in the plan.
35 14. "Member" means any employee who meets all of the following
36 qualifications:
37 (a) Who is a full-time paid person employed by a participating
38 employer in a designated position.
39 (b) Who is receiving salary for personal services rendered to a
40 participating employer or would be receiving salary except for an authorized
41 leave of absence.
42 (c) Whose customary employment is at least forty hours each week and
43 for more than six months in a calendar year.
44 15. "Normal retirement date" means the first day of the calendar month
45 immediately following an employee's completion of twenty years of service or,

1 in the case of a dispatcher, twenty-five years of service, the employee's
2 sixty-second birthday and completion of ten years of service or the month in
3 which the sum of the employee's age and years of credited service equals
4 eighty.

5 16. "ORDINARY DISABILITY" MEANS A PHYSICAL CONDITION THAT THE LOCAL
6 BOARD DETERMINES WILL PREVENT AN EMPLOYEE FROM TOTALLY AND PERMANENTLY
7 PERFORMING A REASONABLE RANGE OF DUTIES WITHIN THE EMPLOYEE'S DEPARTMENT OR A
8 MENTAL CONDITION THAT THE LOCAL BOARD DETERMINES WILL PREVENT AN EMPLOYEE
9 FROM TOTALLY AND PERMANENTLY ENGAGING IN ANY SUBSTANTIAL GAINFUL ACTIVITY.

10 ~~16.~~ 17. "Participating employer" means:

11 (a) An employer which the fund manager has determined to have one or
12 more employees in a designated position. ~~or~~

13 (b) A county, city or town which has entered into a joinder agreement
14 pursuant to section 38-902.

15 (c) BEGINNING JULY 1, 2007, THE FUND MANAGER.

16 ~~17.~~ 18. "Pension" means a series of monthly payments by the retirement
17 plan.

18 ~~18.~~ 19. "Probation or surveillance officer" means an officer appointed
19 pursuant to section 8-203, 12-251 or 12-259 but does not include other
20 personnel, office assistants or support staff.

21 ~~19.~~ 20. "Retired member" means an individual who is being paid a
22 pension on account of the individual's membership in the retirement plan.

23 ~~20.~~ 21. "Retirement" means termination of employment after a member
24 has fulfilled all requirements for a pension.

25 ~~21.~~ 22. "Retirement plan" or "plan" means the corrections officer
26 retirement plan established by this article.

27 ~~22.~~ 23. "Salary" means the base salary, overtime pay, shift
28 differential pay and holiday pay paid a member in a designated position for
29 personal services rendered to a participating employer on a regular monthly,
30 semimonthly or biweekly payroll basis, except that for the purposes of this
31 paragraph the amount of overtime included shall not include payments to the
32 member for the sale of compensatory time. Salary includes amounts that are
33 subject to deferred compensation or tax shelter agreements. Salary does not
34 include payment for any remuneration or reimbursement other than as
35 prescribed by this paragraph. For the purposes of this paragraph, "base
36 salary" means the amount of compensation each member is regularly paid for
37 personal services rendered to an employer before the addition of any extra
38 monies, including overtime pay, shift differential pay, holiday pay, payments
39 for the sale of compensatory time, fringe benefit pay and similar extra
40 payments.

41 ~~23.~~ 24. "Service" means employment rendered to a participating
42 employer as an employee in a designated position. Any absence that is
43 authorized by an employer, including any periods during which the employee is
44 on an employer sponsored long-term disability program, is considered as

1 service if the employee returns or is deemed by the employer to have returned
2 to a designated position within the period of the authorized absence.

3 ~~24.~~ 25. "Total and permanent disability" means a physical or mental
4 condition that is not an accidental disability, that the local board finds
5 totally and permanently prevents a member from engaging in any gainful
6 employment and that is the direct and proximate result of the member's
7 performance of the member's duty as an employee of a participating employer.

8 Sec. 3. Section 38-886.01, Arizona Revised Statutes, is amended to
9 read:

10 38-886.01. Ordinary disability retirement; qualifications;
11 amount of pension; conditions for continued
12 payment of pension

13 A. ~~Full-time dispatchers who are employed by an employer of an~~
14 ~~eligible group as defined in section 38-842~~ A MEMBER may retire and receive
15 an ordinary disability pension if the local board finds that all of the
16 following conditions occur:

17 1. An application for disability retirement is filed with the
18 retirement plan or the local board by either the member or the member's
19 participating employer after the disabling incident or within one year after
20 the date the member ceases to be an employee. Timely application for an
21 ordinary disability pension is a prerequisite to receipt of the pension.

22 2. The member undergoes all medical examinations and tests ordered by
23 the local board and releases to the local board all medical reports and
24 records requested by the local board.

25 3. The local board determines that an ordinary disability condition
26 exists that meets the requirements for an ordinary disability.

27 4. THE MEMBER IS NOT PARTICIPATING IN THE REVERSE DEFERRED RETIREMENT
28 OPTION PLAN PURSUANT TO SECTION 38-885.01.

29 B. The effective date of an ordinary disability retirement shall not
30 predate the date of disability or the date the member ceases to be an
31 employee.

32 C. EXCEPT FOR A FULL-TIME DISPATCHER, THE AMOUNT OF AN ORDINARY
33 DISABILITY PENSION IS EQUAL TO A FRACTION TIMES THE MEMBER'S NORMAL
34 RETIREMENT PENSION THAT IS COMPUTED PURSUANT TO SECTION 38-885, SUBSECTION C
35 AS IF THE MEMBER HAD TWENTY YEARS OF CREDITED SERVICE. THE FRACTION IS THE
36 RESULT OBTAINED BY DIVIDING THE MEMBER'S ACTUAL YEARS OF CREDITED SERVICE,
37 NOT TO EXCEED TWENTY YEARS OF CREDITED SERVICE, BY TWENTY. FOR A FULL-TIME
38 DISPATCHER, the amount of an ordinary disability pension is equal to a
39 fraction times the member's normal retirement pension that is computed
40 pursuant to section 38-885, subsection C as if the member had twenty-five
41 years of credited service. The fraction is the result obtained by dividing
42 the member's actual years of credited service, not to exceed twenty-five
43 years of credited service, by twenty-five.

44 D. During the period, if any, between the effective date of ordinary
45 disability retirement and the date the disabled retired member attains

1 sixty-two years of age the local board may require a disabled retired member
 2 to undergo periodic reevaluation of the continuation of ordinary disability.
 3 If the disabled retired member refuses to submit to reevaluation, the local
 4 board may suspend payment of the pension. If the refusal continues for one
 5 year, the local board may revoke the disabled retired member's rights to the
 6 pension. An ordinary disability pension is terminated if the local board
 7 finds the retired member no longer meets the requirements for ordinary
 8 disability retirement.

9 E. A member does not qualify for an ordinary disability pension if the
 10 local board determines that the member's disability results from any of the
 11 following:

12 1. An injury suffered while engaged in a felonious criminal act or
 13 enterprise.

14 2. Service in the armed forces of the United States that entitles the
 15 member to a veteran's disability pension.

16 3. A physical or mental condition or injury that existed or occurred
 17 before the member's date of membership in the plan.

18 F. Local boards ~~shall base a finding of ordinary disability on medical~~
 19 ~~evidence that is obtained by a medical doctor or clinic selected by the local~~
 20 ~~board and shall disregard any other medical evidence or opinions. If the~~
 21 ~~local board retains more than one medical doctor or clinic in connection with~~
 22 ~~the application,~~ SHALL RETAIN A PHYSICIAN OR CLINIC TO EXAMINE A MEMBER WHO
 23 APPLIES FOR AN ORDINARY DISABILITY PENSION. THE PHYSICIAN OR CLINIC WHO IS
 24 APPOINTED BY THE LOCAL BOARD SHALL OPINE AS TO WHETHER OR NOT THE MEMBER
 25 QUALIFIES FOR AN ORDINARY DISABILITY PENSION. WITH THE APPROVAL OF THE LOCAL
 26 BOARD, THE PHYSICIAN OR CLINIC MAY REFER THE MEMBER TO A SPECIALIST AND MAY
 27 RELY ON THE OPINION OF THAT SPECIALIST IN RENDERING THE PHYSICIAN'S OR
 28 CLINIC'S OPINION. THE PHYSICIAN OR CLINIC MAY ALSO CONSIDER ANY MEDICAL
 29 EVIDENCE THAT IS PROVIDED BY THE MEMBER OR THE MEMBER'S PHYSICIAN. THE LOCAL
 30 BOARD SHALL BASE A FINDING OF ORDINARY DISABILITY SOLELY ON THE OPINION OF
 31 ITS APPOINTED PHYSICIAN OR CLINIC. IF THE LOCAL BOARD RETAINS MORE THAN ONE
 32 PHYSICIAN OR CLINIC IN CONNECTION WITH ANY APPLICATION, the local board shall
 33 resolve any material conflicts presented in the medical evidence that is
 34 presented by the ~~medical doctors~~ PHYSICIANS or clinics.

35 ~~G. For the purposes of this section, "ordinary disability" means a~~
 36 ~~physical condition that the local board determines will prevent an employee~~
 37 ~~from totally and permanently performing a reasonable range of duties within~~
 38 ~~the employee's department or a mental condition that the local board~~
 39 ~~determines will prevent an employee from totally and permanently engaging in~~
 40 ~~any substantial gainful activity.~~

41 Sec. 4. Section 38-893, Arizona Revised Statutes, is amended to read:

42 38-893. Local boards; powers and duties; rules; hearings;
 43 administrative review

44 A. The administration of the plan and the responsibility for making
 45 the provisions of the plan effective for each employer are vested in a local

1 board. The state department of corrections, the department of juvenile
2 corrections, each participating county sheriff's department, each
3 participating city or town, each participating employer of full-time
4 dispatchers for eligible groups as defined in section 38-842, ~~and~~ the
5 judiciary ~~AND THE FUND MANAGER~~ shall have a local board. Each local board is
6 constituted as follows:

7 1. For the state departments, two members who are elected by secret
8 ballot by members employed by that department in a designated position and
9 two citizens who are appointed by the governor. The director of each state
10 department shall appoint one member to the local board who is knowledgeable
11 in personnel actions. Each state department local board shall elect a
12 chairman.

13 2. For each participating county, the chairman of the board of
14 supervisors, or the chairman's designee who is approved by the board of
15 supervisors, as chairman, two members who are elected by secret ballot by
16 members employed by the participating county in a designated position and two
17 citizens, one of whom shall be the head of the merit system if it exists for
18 the group of members, who are appointed by the chairman of the board of
19 supervisors with the approval of the board of supervisors.

20 3. For political subdivisions, ~~OTHER THAN THE FUND MANAGER~~, the mayor
21 or chief elected official or a designee of the mayor or chief elected
22 official approved by the respective governing body as chairman, two members
23 elected by secret ballot by members employed by the appropriate employer and
24 two citizens, one of whom shall be the head of the merit system if it exists
25 for the group of members, appointed by the mayor or chief elected official
26 and with the approval of the city council or governing body of the employer.

27 4. For the judiciary, two members who are elected by secret ballot by
28 members who are employed as a probation, surveillance or juvenile detention
29 officer, a designee of the chief justice of the Arizona supreme court and two
30 citizens, one of whom shall be the head of a human resource department for
31 the group of members, appointed by the chief justice.

32 5. ~~FOR THE FUND MANAGER, THE ADMINISTRATOR HIRED BY THE FUND MANAGER~~
33 ~~PURSUANT TO SECTION 38-848 OR THE ADMINISTRATOR'S DESIGNEE WHO IS APPROVED BY~~
34 ~~THE FUND MANAGER, TWO MEMBERS WHO ARE ELECTED BY SECRET BALLOT BY MEMBERS WHO~~
35 ~~ARE EMPLOYED BY THE FUND MANAGER AND TWO CITIZENS WHO ARE APPOINTED BY THE~~
36 ~~CHAIRPERSON OF THE FUND MANAGER WITH THE APPROVAL OF THE FUND MANAGER.~~

37 B. The appointments and elections of local board members shall take
38 place with one elective and one appointive board member, as designated by the
39 appointing authority, serving a term ending two years after the date of
40 appointment or election and the other local board members serving a term
41 ending four years after the date of appointment or election. Thereafter,
42 every second year, and as a vacancy occurs, an office shall be filled for a
43 term of four years in the same manner as provided in this section.

44 C. Within ten days after the member's appointment or election, each
45 member of a local board shall take an oath of office that, so far as it

1 devolves on the member, the member shall diligently and honestly administer
2 the affairs of the local board and shall not knowingly violate or willingly
3 permit to be violated any of the provisions of law applicable to the plan.

4 D. Except as limited by subsection E of this section, a local board
5 shall:

6 1. Decide all questions of eligibility and service credits and
7 determine the amount, manner and time of payment of any benefit under the
8 plan.

9 2. Make a determination as to the right of a claimant to a benefit and
10 afford a claimant or the fund manager, or both, a right to a rehearing on the
11 original determination.

12 3. Request and receive from the employers and from members information
13 as is necessary for the proper administration of the plan and action on
14 claims for benefits and forward the information to the fund manager.

15 4. Distribute, in the manner the local board determines to be
16 appropriate, information explaining the plan that is received from the fund
17 manager.

18 5. Furnish the employer, the fund manager and the legislature, on
19 request, with annual reports with respect to the administration of the plan
20 that are reasonable and appropriate.

21 6. Appoint a medical board, which is composed of a designated
22 physician or clinic other than the employer's regular employee or
23 contractor. If required, the local board may employ other physicians to
24 report on special cases. The examining physician or clinic shall report the
25 results of examinations made to the local board, and the secretary of the
26 local board shall preserve the report as a permanent record.

27 7. Sue and be sued to effectuate the duties and responsibilities set
28 forth in this article.

29 E. A local board has no power to add to, subtract from, modify or
30 waive any of the terms of the plan, change or add to any benefits provided by
31 the plan or waive or fail to apply any requirement of eligibility for
32 membership or benefits under the plan.

33 F. A local board, from time to time, shall establish and adopt rules
34 as it deems necessary or desirable for its administration. All rules and
35 decisions of a local board shall be uniformly and consistently applied to all
36 members in similar circumstances.

37 G. An action by a majority vote of the members of a local board that
38 is not inconsistent with the provisions of the plan is final, conclusive and
39 binding on all persons affected by it, unless a timely application for a
40 rehearing or appeal is filed as provided in this article.

41 H. A claimant or the fund manager may apply for a rehearing before the
42 local board within the time period prescribed in this subsection. A claimant
43 or the fund manager shall file an application for rehearing in writing with a
44 member of the local board or its secretary within sixty days after:

1 1. The claimant receives notification of the local board's original
2 action by certified mail, by attending the meeting at which the action is
3 taken or by receiving benefits from the plan pursuant to the local board's
4 original action, whichever occurs first.

5 2. The fund manager receives notification of the local board's
6 original action by certified mail or by receipt of written directions from
7 the local board pursuant to its original action, whichever occurs first.

8 I. A hearing before a local board on a matter remanded from the
9 superior court is not subject to a rehearing before the local board.

10 J. Decisions of local boards are subject to judicial review pursuant
11 to title 12, chapter 7, article 6.

12 K. When making a ruling, determination or calculation, the local board
13 is entitled to rely on information furnished by the employer, the fund
14 manager, independent legal counsel or the actuary for the plan.

15 L. Each member of a local board is entitled to one vote. A majority
16 of the appointed and elected members is necessary for a decision by the
17 members of a local board at any meeting of the local board.

18 M. The local board shall adopt bylaws as it deems necessary. The
19 local board shall elect a secretary who may, but need not, be a member of the
20 local board. The secretary of the local board shall keep a record and
21 prepare minutes of all meetings, forward the minutes to the fund manager
22 within forty-five days after each meeting and forward all necessary
23 communications to the fund manager.

24 N. The employer shall pay the fees of the medical board and of the
25 local board's legal counsel and all other expenses of the local board
26 necessary for the administration of the plan at rates and in amounts as the
27 local board approves.

28 O. The local board shall issue directions to the fund manager
29 concerning all benefits that are to be paid from the employer's account
30 pursuant to the provisions of the fund. The local board shall keep on file,
31 in the manner it deems convenient and proper, all reports from the fund
32 manager and the actuary.

33 P. The local board and the individual members of the local board are
34 indemnified from the assets of the fund against any liability arising by
35 reason of any act, or failure to act, made in good faith pursuant to the
36 provisions of the plan.

37 Sec. 5. Transfer of assets

38 A. Notwithstanding any other statute, a full-time employee of the fund
39 manager who becomes eligible for membership in the corrections officer
40 retirement plan pursuant to this act may elect to participate in that plan
41 within the deadlines and pursuant to the terms prescribed for such
42 participation by the fund manager.

43 B. Assets under the existing Arizona state retirement system or plan
44 or any retirement plan of a political subdivision of this state that are
45 necessary to equal the actuarial present value of projected benefits

1 attributable to the transferring employee, calculated using the actuarial
2 methods and assumptions adopted by the existing Arizona state retirement
3 system or plan or political subdivision plan, shall be transferred from that
4 system or plan to the corrections officer retirement plan within sixty days
5 after notification by the fund manager. That portion of the transferred
6 assets that is attributable to employee contributions, including interest
7 credits, shall be properly allocated to each affected employee of the fund
8 manager and credited to the employee's initial accumulated contributions,
9 pursuant to a schedule that is furnished by the system or plan to the fund
10 manager. The fund manager may elect to pay the cost of the fund manager's
11 full-time employees past service that is on account with one or more public
12 retirement systems or plans of this state or any political subdivision of
13 this state.

14 Sec. 6. Retroactivity

15 Section 38-881, Arizona Revised Statutes, as amended by Laws 2006,
16 chapter 264, section 13 and chapter 308, section 1, section 38-886.01 and
17 section 38-893, Arizona Revised Statutes, as amended by this act, apply, and
18 section 5 of this act is effective, retroactively to from and after June 30,
19 2007.

20 Sec. 7. Conditional enactment

21 Section 38-881, Arizona Revised Statutes, as amended by Laws 2006,
22 chapter 264, section 14 and chapter 308, section 2 and section 2 of this act,
23 becomes effective on the date prescribed in Laws 2005, chapter 324, section 2
24 but only on the occurrence of the condition prescribed by Laws 2005, chapter
25 324, section 2.